

UNITED STATES OF AMERICA  
Before The  
OFFICE OF THRIFT SUPERVISION, DEPARTMENT OF THE TREASURY

In the Matter of	)	
	)	OTS Order No. NE94-41
ROBERT N. GAMER,	)	
	)	Date: December 22, 1994
a former officer of	)	
Elmira Savings Bank, F.S.B.,	)	
Elmira, New York (No. 7788)	)	

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CONSENT ORDER OF PROHIBITION AND  
CONSENT CEASE-AND-DESIST ORDER DIRECTING PAYMENT OF RESTITUTION

WHEREAS, ROBERT N. GAMER, until June 1994, served as a Senior Vice President of ELMIRA SAVINGS BANK, F.S.B. ("ELMIRA SAVINGS"), a federally chartered savings bank that maintains its home office in Elmira, New York; and

WHEREAS, in accordance with the Home Owners' Loan Act, the Office of Thrift Supervision ("OTS") regulates, examines and supervises ELMIRA SAVINGS, the deposits of which are subject to federal deposit insurance pursuant to the Federal Deposit Insurance Act ("FDIA");

WHEREAS, based on OTS formal examination No. NE94-29, the OTS has found, inter alia, that: (i) ROBERT N. GAMER caused ELMIRA SAVINGS to make and fund numerous unsecured consumer loans to members of his family (the "Affiliated Borrowers"),<sup>1</sup> who failed to satisfy ELMIRA SAVINGS' loan underwriting criteria and who lacked the financial capacity to repay such loans in accordance with their terms; (ii) several of the Affiliated Borrowers have defaulted on their obligations under the aforesaid consumer loans;

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1. The Affiliated Borrowers are further identified at paragraph 2(c) of this Order.

(iii) ROBERT N. GAMER participated in causing ELMIRA SAVINGS' records to fail to accurately reflect the repayment status of consumer loans made to the Affiliated Borrowers and others; and (iv) on or about May 31, 1994, ELMIRA SAVINGS charged off \$299,733 in losses with respect to defaulted consumer loans made to several of the Affiliated Borrowers; and

WHEREAS, based on the above investigative findings, the OTS is of the opinion that ROBERT N. GAMER engaged in regulatory violations, unsafe or unsound lending practices and breaches of fiduciary duty, demonstrating personal dishonesty and willful or continuing disregard for the safety or soundness of ELMIRA SAVINGS, that caused ELMIRA SAVINGS to suffer significant loss; and

WHEREAS, based on the aforesaid findings, the OTS concludes that the grounds exist for it to seek administrative relief against ROBERT N. GAMER, pursuant to Sections 8(e) and 8(b) of the FDIA, 12 U.S.C. §§ 1818(e) and 1818(b);<sup>2</sup> and

WHEREAS, ROBERT N. GAMER, while neither admitting nor denying the above findings, conclusions and opinions of the OTS, for purposes of settling with the OTS has consented and agreed to the OTS' issuance of this CONSENT ORDER OF PROHIBITION AND CONSENT CEASE-AND-DESIST ORDER DIRECTING PAYMENT OF RESTITUTION ("Order"), pursuant to Sections 8(e) and 8(b) of the FDIA, by executing on December 12, 1994, the accompanying Stipulation and Consent to Issuance of Consent Order ("Stipulation"); and

WHEREAS, the undersigned OTS Regional Director has been duly

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2. All references to the United States Code (U.S.C.) are as amended, except as otherwise specified.

delegated the authority to cause the OTS to issue consent orders.

NOW THEREFORE, IT IS ORDERED, pursuant to 12 U.S.C. §§ 1818(e) and 1818(b), that:

1. ROBERT N. GAMER is prohibited from participating in any manner in the conduct of the affairs of ELMIRA SAVINGS and any subsidiaries, service corporations or other affiliates thereof. ROBERT N. GAMER is and shall be subject to the statutory prohibitions provided by Section 8(e) of the FDIA, 12 U.S.C. § 1818(e). Due to and without limitation on the operation of 12 U.S.C. §§ 1818(e)(6) and 1818(e)(7), ROBERT N. GAMER, except upon the prior written consent of the OTS (acting through its Director or an authorized representative thereof) and any other "appropriate Federal financial institutions regulatory agency," for purposes of 12 U.S.C. § 1818(e)(7)(B)(ii), shall not:

(A) hold any office in, or participate in any manner in the conduct of the affairs of, any institution or agency specified in 12 U.S.C. § 1818(e)(7)(A) (the "Paragraph (7)(A) Institutions"), including, but not limited to:

(i) any insured depository institution, e.g., savings and loan associations, savings banks, national banks, trust companies, and other banking institutions;

(ii) any institution treated as an insured bank under 12 U.S.C. §§ 1818(b)(3), (b)(4), or as a savings association under 12 U.S.C. § 1818(b)(9), e.g., subsidiaries and holding companies of banks or savings associations;

(iii) any insured credit union under the Federal Credit

Union Act, 12 U.S.C. §§ 1781 et seq.;

(iv) any institution chartered under the Farm Credit Act of 1971, 12 U.S.C. §§ 2001 et seq.;

(v) any appropriate Federal financial institutions regulatory agency, within the meaning of 12 U.S.C. § 1818(e)(7)(D);

(vi) the Federal Housing Finance Board and any Federal Home Loan Bank; and

(vii) the Resolution Trust Corporation.

(B) solicit, procure, transfer, attempt to transfer, vote or attempt to vote any proxy, consent or authorization with respect to any voting rights in any Paragraph (7)(A) Institution;

(C) violate any voting agreement previously approved by the "appropriate Federal banking agency" within the meaning of 12 U.S.C. § 1813(q); or

(D) vote for a director, or serve or act as an "institution-affiliated party," as that term is defined at 12 U.S.C. § 1813(u), e.g., a director, officer, employee, controlling stockholder of, or agent for, an insured depository institution.

2. (a) ROBERT N. GAMER, in order to remedy conditions resulting from the aforementioned regulatory violations and unsafe or unsound practices, shall reimburse and pay restitution to ELMIRA SAVINGS in the amount of Sixty-six Thousand Three Hundred Thirty-five Dollars (\$66,335.00) (the "Restitution Amount") as follows:

(i) by transferring and assigning, within ten (10) days of the Trigger Date (as defined below), all his right, title and interest in each and every share of common stock of ELMIRA

SAVINGS in which he has any legal or equitable ownership interest, to wit: the 2,864 shares of such stock held for ROBERT N. GAMER in the ELMIRA SAVINGS Employee Stock Ownership Plan; and the 225 shares of such stock owned in the name of ROBERT N. GAMER;<sup>3</sup>

(ii) by signing, within ten (10) days of the Trigger Date, any and all releases or other documents, in a form acceptable to ELMIRA SAVINGS, that release ELMIRA SAVINGS from any and all claims for financial or other relief ROBERT N. GAMER has or may have against ELMIRA SAVINGS, as of the date hereof, including but not limited to his claim for payment by ELMIRA SAVINGS of Four Thousand Dollars (\$4,000.00), which claim is identified at item no. 33 of Schedule B (Personal Property Schedule) of the Voluntary Petition for bankruptcy, dated September 23, 1994, which was filed by ROBERT N. GAMER and his wife with the United States Bankruptcy Court for the Western District of New York; and

(iii) by paying Sixteen Thousand Dollars (\$16,000.00) to ELMIRA SAVINGS, by making sixteen (16) quarterly payments of One Thousand Dollars (\$1,000.00) each to ELMIRA SAVINGS, commencing on the later of March 31, 1995 or ten days from the Trigger Date, and thereafter payable on each subsequent June 30th, September 30th, December 31st, and March 31st (the "Due Dates") until all sixteen payments have been paid in full. The entire unpaid balance of the restitution obligation imposed by ~~this subparagraph shall become immediately due and payable in the~~ event that ROBERT N. GAMER shall fail to make a required payment

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3. For purposes of this Order the above-described 3,089 shares of Elmira Savings stock are assigned an estimated current value of \$46,335, based on \$15.00 per share.

within ten (10) days of the required Due Date.

(b) For purposes of this Order, "Trigger Date" means the date on which the automatic stay of the U.S. Bankruptcy Court, pursuant to Bankruptcy Code § 362(a), ceases to be effective as to the OTS in the aforementioned bankruptcy proceedings commenced by ROBERT N. GAMER and his wife.

(c) The restitution obligations of this paragraph 2 are imposed on ROBERT N. GAMER pursuant to 12 U.S.C. § 1818(b)(6)(A). The obligations imposed on ROBERT N. GAMER by this paragraph 2 shall not be deemed to release the Affiliated Borrowers from their contractual obligations owing to ELMIRA SAVINGS. For purposes of this Order the Affiliated Borrowers are: Robert J. Gamer, Jr., Mary E. Davis, Andrew P. Davis, and Suzanne Gamer.

3. ROBERT N. GAMER shall promptly and appropriately respond to any request from the OTS for documents that the OTS reasonably requests to demonstrate compliance with this Order. Satisfaction of this obligation may include and is not limited to the execution by ROBERT N. GAMER of any and all documents that the OTS and/or ELMIRA SAVINGS require to accomplish the purposes of paragraph no. 2 of this Order.

4. Due to issuance of this Order, ROBERT N. GAMER is a person "subject to an order in effect under subsection (e)" of FDIA Section 8 for purposes of Section 8(j) of the FDIA, 12 U.S.C. § 1818(j).

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5. The Stipulation is made a part hereof and is incorporated herein by this reference.

6. This Order is and shall become effective on the date it is issued, as shown in the caption hereof. This Order shall

remain in effect until it is terminated, modified or suspended, which may occur only by formal written action of the OTS, acting by and through its Director, Regional Director or other authorized representative.

OFFICE OF THRIFT SUPERVISION

By: 

Angelo A. Vigna

Regional Director, Northeast Region

UNITED STATES OF AMERICA  
Before The  
OFFICE OF THRIFT SUPERVISION, DEPARTMENT OF THE TREASURY

In the Matter of	)	
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ROBERT N. GAMER,	)	Re: OTS Order No. NE94-41
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a former officer of	)	Dated: December 22, 1994
Elmira Savings Bank, F.S.B.,	)	
Elmira, New York (No. 7788)	)	
	)	

STIPULATION AND CONSENT TO ISSUANCE OF CONSENT ORDER

This Stipulation and Consent to Issuance of Consent Order ("Stipulation"), concerning the accompanying CONSENT ORDER OF PROHIBITION AND CONSENT CEASE-AND-DESIST ORDER DIRECTING PAYMENT OF RESTITUTION (the "Order"), is made by ROBERT N. GAMER, a resident of Elmira, New York, and is accepted by the OFFICE OF THRIFT SUPERVISION ("OTS"), an office within the United States Department of the Treasury, acting by and through its Regional Director for the Northeast Region.

R E C I T A L S

WHEREAS, the OTS, based upon information derived from the exercise of its regulatory responsibilities, has informed ROBERT N. GAMER, a former Senior Vice President of ELMIRA SAVINGS BANK, F.S.B. ("Elmira Savings") of Elmira, New York, that the OTS is of the opinion that the grounds exist to initiate an administrative proceeding against ROBERT N. GAMER for the issuance of administrative orders, pursuant to Sections 8(e) and 8(b) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. §§ 1818(e), 1818(b);<sup>1</sup> and

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1. All references to the United States Code ("U.S.C.") in this Stipulation and the Order are to the U.S.C. as amended.



WHEREAS, ROBERT N. GAMER desires to cooperate with the OTS and to avoid the time and expense of such administrative litigation with the OTS.

NOW, THEREFORE, ROBERT N. GAMER, without either admitting or denying either that the aforesaid grounds exist or the OTS' factual findings, conclusions and opinions summarized in the preamble of the attached Order (except to the extent otherwise specifically provided in this Stipulation, including but not limited to the admission of jurisdiction set forth in paragraph 2 below), hereby stipulates and agrees as follows:

1. Consideration. ROBERT N. GAMER, in view of the foregoing premises and for the purposes of this settlement only, hereby voluntarily enters into this Stipulation and consents to issuance of the Order in consideration for OTS forever releasing and discharging him from all potential administrative claims and charges that have been or might have been asserted by the OTS against him based on his participation in consumer lending activities at Elmira Savings.

2. Jurisdiction.

(a) Elmira Savings is and at all material times has been a "savings association" within the meaning of Section 3(b) of the FDIA, 12 U.S.C. § 1813(b), and Section 2(4) of the Home Owners' Loan Act, 12 U.S.C. § 1462(4)), and an "insured depository institution" as that term is defined in Section 3(c) of the FDIA, 12 U.S.C. § 1813(c).

(b) ROBERT N. GAMER, due to his service as an officer of Elmira Savings, is and has been an "institution-affiliated party," as that term is defined in Section 3(u) of the FDIA, 12

U.S.C. § 1813(u).

(c) Pursuant to Section 3(q) of the FDIA, 12 U.S.C. § 1813(q), the OTS is the "appropriate Federal banking agency" to maintain administrative enforcement proceedings against institution-affiliated parties relative to savings associations, and therefore, ROBERT N. GAMER is subject to the authority of the OTS to initiate and maintain administrative proceedings against him pursuant to Section 8(e) and 8(b) of the FDIA, 12 U.S.C. §§ 1818(e) and 1818(b).

(d) Due to the operation of Section 8(i)(3) of the FDIA, 12 U.S.C. § 1818(i)(3), the jurisdiction and authority of the OTS to take administrative action against ROBERT N. GAMER, pursuant to 12 U.S.C. §§ 1818(e) and 1818(b), has not been affected by his termination of employment by Elmira Savings, which termination occurred within six years of the date hereof.

3. Consent. ROBERT N. GAMER consents to the issuance by the OTS of the Order, and agrees to comply with the terms of the Order. ROBERT N. GAMER further stipulates that the Order (including the OTS' issuance thereof) complies with all requirements of law.

4. Finality. The Order is issued by the OTS under the authority of Sections 8(e) and 8(b)(6)(A) of the FDIA, 12 U.S.C. §§ 1818(e) and 1818(b)(6)(A). Upon its issuance by the OTS (by and through its Regional Director for the Northeast Region), the Order shall be a final order that is effective and fully enforceable by the OTS under provisions of federal law, including Section 8(i) of the FDIA, 12 U.S.C. § 1818(i).

5. Waivers. ROBERT N. GAMER voluntarily and knowingly waives:

(a) the right to be served with a written notice of the OTS' charges against him (including but not limited to a Notice of Intention to Prohibit), which notice would be issued and served pursuant to 12 U.S.C. §§ 1818(e), 1818(b) and other applicable law;

(b) the right to an administrative adjudicatory hearing of the OTS' charges against him, which hearing is provided by 12 U.S.C. §§ 1818(e), 1818(b) and 1818(h)(1); and

(c) the right to seek judicial review of the Order, including (but not limited to) any such right provided by Section 8(h)(2) of the FDIA, 12 U.S.C. § 1818(h)(2), or otherwise to challenge the validity of the Order.

6. Indemnification. ROBERT N. GAMER shall neither (i) cause or permit Elmira Savings (or any subsidiary thereof) to incur, directly or indirectly, any expense for any legal (or other professional expenses) incurred relative to the negotiation and issuance of the Order, nor (ii) apply to or obtain any indemnification (or other reimbursement) from Elmira Savings (or any subsidiary thereof) with respect to any such expenses directly or indirectly incurred by him. Any such payments received by or on behalf of ROBERT N. GAMER in connection with this action shall be returned to Elmira Savings.

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7. Other Government Actions Not Affected; No Discharge.

(a) ROBERT N. GAMER's consent to the issuance by the OTS of the Order is intended solely for purposes of settling and resolving the OTS' claims against him, as provided by Paragraph 1

hereof, and does not release, discharge, compromise, settle, dismiss, resolve, or in any way affect any actions, claims, charges against, or liability of ROBERT N. GAMER that arise in connection with his former relationship with Elmira Savings, and that may be or have been brought by any government agency or entity other than the OTS.

(b) By signing this Stipulation, ROBERT N. GAMER agrees he will not assert any of the OTS' actions concerning him as the basis for a claim of double jeopardy in any pending or future proceeding brought by the United States Department of Justice or any other governmental entity. Without limitation on the foregoing, none of the following shall serve as the basis for a claim of double jeopardy by ROBERT N. GAMER: the OTS' issuance of the Order; any provision of the Order (including Paragraph 2 thereof) requiring the payment of any monies or the providing of any other financial relief; or ROBERT N. GAMER's payment of any moneys or providing any other financial relief as contemplated by the Order (including Paragraph 2 thereof). The OTS is of the view that the affirmative relief provisions of the Order (including those requiring payments pursuant to 12 U.S.C. § 1818(b)(6)(A)) are remedial and not punitive in nature, and ROBERT N. GAMER does not and will not contest this.

(c) In any bankruptcy proceeding in which it is or may be contended that the financial obligation of ROBERT N. GAMER pursuant to the Order is subject to discharge,<sup>2</sup> ROBERT N. GAMER

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2. It should be noted that ROBERT N. GAMER and his wife have filed a Voluntary Petition, dated September 23, 1994, with the United States Bankruptcy Court for the Western District of New York, seeking bankruptcy protection under Chapter 7 of the Bankruptcy

will in no manner contest any assertions by OTS or Elmira Savings that said obligation, established under 12 U.S.C. § 1818(b)(6)(A), arises out of facts that result in claims not dischargeable in bankruptcy pursuant to 11 U.S.C. § 523(a)(11).

8. Availability of Criminal Sanctions. ROBERT N. GAMER acknowledges that Section 8(j) of the FDIA, 12 U.S.C. § 1818(j), sets forth criminal penalties for knowing violations of the Order, which is an order issued under subsection (e) of Section 8 of the FDIA.

9. Understanding about Hardship Application. It is understood that the OTS has agreed to the Restitution Amount and the manner of its payment, as set forth at paragraph 2 of the Order, based on the OTS's reliance on sworn documents (including but not limited to an OTS Form 1571 signed on November 9, 1994) demonstrating financial hardship that have been submitted to the OTS by ROBERT N. GAMER (the "Hardship Application"). In the event that any information included in the Hardship Application is found to be false or misleading with respect to any material fact or, in connection with the Hardship Application, ROBERT N. GAMER shall have omitted to state a material fact concerning any matter addressed in the Hardship Application, then, without limitation on other available remedies, the Restitution Amount, provided for in the Order, shall be increased to \$299,733.

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10. Communications and Payment Procedures.

(a) ROBERT N. GAMER shall make his payments of the Restitution Amount, which are required by paragraph 2 of the

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(Footnote 2 continued from previous page)  
Code.

Order, by cashier's checks, bank checks or money orders made payable to the order of ELMIRA SAVINGS BANK, F.S.B., and he shall submit such payments, under the cover of letters, sent by Certified Mail (Return Receipt Requested) addressed to Elmira Savings as follows:

Mr. Robert P. Carges, President  
Elmira Savings Bank, F.S.B.  
333 East Water Street  
Elmira, New York 14901

with copies sent to:

Mr. John F. Roche  
Office of Thrift Supervision  
One Riverfront Center  
20 Stanwix Street  
Pittsburgh, PA 15222-4893

or such other addresses as may be the subject of written notice to ROBERT N. GAMER by Elmira Savings and/or the OTS. The cover letters accompanying the payments by ROBERT N. GAMER shall refer to the OTS' Order by its number (OTS Order No. NE94-41).

(b) The OTS and Elmira Savings may send written notices to ROBERT N. GAMER care of his counsel:

David Rothenberg, Esq.  
Geiger and Rothenberg  
800 Times Square Building  
45 Exchange Street  
Rochester, New York 14614

(c) Except as otherwise provided by subparagraph (a) hereof, all communications required or permitted to be sent by ROBERT N. GAMER to the OTS shall be sent to:

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Angelo A. Vigna, Regional Director  
Office of Thrift Supervision  
10 Exchange Place, 18th Floor  
Jersey City, New Jersey 07302

with a copy also sent to the OTS' enforcement counsel, as follows:

Steven A. Rosenberg, Esq.  
Senior Enforcement Counsel  
Office of Thrift Supervision  
10 Exchange Place, 18th Floor  
Jersey City, New Jersey 07302,

or such other addresses as may be the subject of written notice to  
ROBERT N. GAMER by the OTS.

11. Miscellaneous.

(a) The construction and validity of this Stipulation and the Order shall be governed by the laws of the United States of America.

(b) All references to the OTS in this Stipulation and the Order shall also mean any of the OTS' predecessors, successors, and assigns.

(c) The section and paragraph headings in this Stipulation and the Order are for convenience only, and such headings shall not affect the interpretation of this Stipulation or the Order.

(e) The terms of this Stipulation and the Order represent the final written agreement of the parties with respect to the subject matters hereof, and constitute the sole agreement of the parties with respect to such subject matters.

(f) The terms of this Stipulation and of the Order may not be amended or modified except by formal written action of the OTS.

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(g) The consent by ROBERT N. GAMER to the OTS' issuance of the Order, pursuant to this Stipulation, is intended to effect a settlement with the OTS, and nothing in these documents precludes ROBERT N. GAMER from interposing in any proceeding any

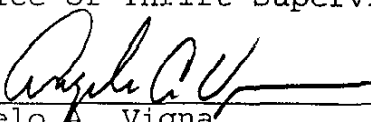
objection to the use of the Order and this Stipulation that may be raised under Fed. R. Evid. 408, 12 C.F.R. § 509.15 (1994), or any other similar law or rule concerning the admissibility of a settlement (or offers therefor) as evidence in a proceeding; provided, however, that the Order and this Stipulation may be used in the aforementioned bankruptcy proceeding for the purpose of establishing the restitution liability of ROBERT N. GAMER, and in any proceeding brought by the OTS against ROBERT N. GAMER for enforcement of the Order or as otherwise provided by 12 U.S.C. § 1818(i).

WHEREFORE, on this 12<sup>th</sup> day of December, 1994, ROBERT N. GAMER executes this Stipulation, intending to be legally bound hereby.

Accepted by:

Office of Thrift Supervision

  
ROBERT N. GAMER

By:   
Angelo A. Vigna  
Regional Director, Northeast Region

Date: 12/22, 1994